

# TOWN OF DAVIE

## TOWN COUNCIL AGENDA REPORT

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Mark Kutney, AICP, Development Services Director/(954) 797-1101

**SUBJECT:** Ordinance 1st Reading/Quasi-judicial  
ZB 11-3-01, DFD Capital Development Corporation, 10700 State Road  
84/Generally located on the south side of State Road 84 between Hiatus  
Road and Bright Road

**AFFECTED DISTRICT:** District 3

**TITLE OF AGENDA ITEM:** AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING PETITION ZB 11-3-01, CHANGING THE CLASSIFICATION OF CERTAIN LANDS WITHIN THE TOWN OF DAVIE FROM T-1, TRAILER PARK (BROWARD COUNTY) TO CC, COMMERCE CENTER DISTRICT, UTILIZING THE BROWARD COUNTY 5 PERCENT RESIDENTIAL TO COMMERCIAL FLEXIBILITY RULE; AMENDING THE TOWN ZONING MAP TO COMPLY THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

**REPORT IN BRIEF:** The applicant is requesting to rezone the 7.75 acre subject site from T-1, Trailer Park (Broward County) to CC, Commerce Center District, utilizing the Broward County 5% residential to commercial flexibility rule, in order to allow development of a 85,000 square foot, 68 unit Business/Commerce Center. This is a unique application, as it is the first time a request to rezone to the CC, Commerce Center District utilizing the 5% flex rule has been made. Initially, the applicant had requested a land use plan amendment, but after consulting with the Broward County Planning Council it was determined that utilization of the 5% flexibility rule to be a viable mechanism provided that permitted uses are consistent with neighborhood office and/or retail sales of merchandise or services. The applicant has offered voluntary deed restrictions in order to prohibit incompatible uses and achieve compliance with both the Town's and Broward County Land Use plan. The uses the applicant has prohibited are: laboratories, light fabrication, motion picture studio, radio or TV station, research facilities, wholesale. It is noted that Broward County recognizes the Town of Davie Commercial/Office land use classification as Commercial under its land use plan, and this request utilizes 5.9 acres of commercial flexibility. There are currently 211.28 acres of flexibility available within Flex Zone 100.

The request is not in conflict with Comprehensive Plan or any element thereof. The subject site meets the minimum lot area and frontage required by the Land Development Code's conventional nonresidential development standards for the CC, Commerce Center District. It is believed that the uses will not excessively increase traffic beyond what was anticipated by the underlying Residential (5 DU/AC) and Commercial/Office land use plan designations. The proposed rezoning will not create an unrelated isolated zoning district and the applicant has voluntarily eliminated incompatible uses which makes the request consistent with the Comprehensive Plan. The proposed use can be considered to be in harmony with the general intent and purpose of the code, and will not be detrimental to the public welfare.

**PREVIOUS ACTIONS:** Town Council tabled the item from the February 21, 2002 to the March 6, 2002 meeting at the request of staff.

**CONCURRENCES:** At the February 13, 2002 Planning and Zoning Board meeting Vice-Chair Bender made a motion, seconded by Ms. Turin, to approve subject to the applicant voluntarily “deed restricting out” telecommunications towers in addition to the other deed restrictions (Motion carried 4-0, Mr. Waitkus was absent).

**FISCAL IMPACT:** None

**RECOMMENDATION(S):** Motion to approve subject to the applicant’s voluntary declaration of restrictions

**Attachment(s):** Ordinance, Planning Report, Conceptual site plan, Justification letter, Declaration of restrictions, 11/6/01 letter to Planning Council, Land use map, Subject site map, Aerial

ORDINANCE \_\_\_\_\_

AN ORDINANCE OF THE TOWN OF DAVIE, FLORIDA, APPROVING PETITION ZB 11-3-01, CHANGING THE CLASSIFICATION OF CERTAIN LANDS WITHIN THE TOWN OF DAVIE FROM T-1, TRAILER PARK (BROWARD COUNTY) TO CC, COMMERCE CENTER DISTRICT, UTILIZING THE BROWARD COUNTY 5 PERCENT RESIDENTIAL TO COMMERCIAL FLEXIBILITY RULE; AMENDING THE TOWN ZONING MAP TO COMPLY THEREWITH; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council of the Town of Davie authorized the publication of a notice of a public hearing as required by law, that the classification of certain lands within the Town be changed from T-1, Trailer Park (Broward County) to CC, Commerce Center District, utilizing the Broward County 5% residential to commercial flexibility rule;

WHEREAS, said notice was given and publication made as required by law, and a public hearing thereunder was held on the date of the adoption of this ordinance.  
NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE FLORIDA:

SECTION 1. That the property herein after described be and the same is hereby rezoned and changed from T-1, Trailer Park (Broward County) to CC, Commerce Center District:

a. The subject property is described in Exhibit "A", which is attached hereto and made a part hereof.

SECTION 2. That the owner has voluntarily executed a deed restriction on the property described in Section 1:

a. The declaration of restrictions is included in Exhibit "A", hereto, and made a part hereof.

SECTION 3. That the zoning map heretofore adopted by the Town Council be and the same is hereby amended to show the property described in Section 1, herein, as CC, Commerce Center District.

SECTION 4. All Ordinances or parts of Ordinances in conflict herewith are to the extent of such conflict hereby repealed.

SECTION 5. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this Ordinance.

SECTION 6. This Ordinance shall take effect immediately upon its passage and adoption.

PASSED ON FIRST READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002.

PASSED ON SECOND READING THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002.

ATTEST:

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2002.

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**TOWN OF DAVIE**  
**Development Services Department**  
**Planning & Zoning Division Staff**  
**Report and Recommendation**

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**APPLICANT INFORMATION**

**Owner/Agent:**

**Name:** DFD Capital Development Corporation  
**Address:** 812 NW 1 Street  
**City:** Fort Lauderdale, FL 33311  
**Phone:** (954)525-1032

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**BACKGROUND INFORMATION**

**Date of Notification:** January 16, 2002    **Number of Notifications:** 56

**Application History:** At the January 23, 2002 Planning and Zoning Board meeting, Ms. Moore made a motion, seconded by Mr. Waitkus, to table the request to the February 13, 2002 meeting at the request of staff (Motion carried 4-0, Vice-Chair Bender was absent).

**Application Request:** Rezone the 7.75 acre subject site **FROM:** T-1, Trailer Park (Broward County); **TO:** CC, Commerce Center District, utilizing the Broward County 5% residential to commercial flexibility rule.

**Address/Location:** 10700 State Road 84/Generally located on the south side of State Road 84 between Hiatus Road and Bright Road.

**Future Land Use Plan Designation:** Residential (5 DU/AC) and Commercial/Office

**Zoning:** T-1, Trailer Park (Broward County)

**Existing Use:** Vacant

**Proposed Use:** 85,000 square foot, 68 unit Business/Commerce Center

**Parcel Size:** 7.75 acres (337,590 square feet) Total  
5.9 acres (257,004 square feet) Residential (5 DU/AC)  
1.85 acres (80,586 square feet) Commercial/Office

|               |                                 |  |
|---------------|---------------------------------|--|
|               | <b><u>Surrounding Uses:</u></b> | <b><u>Surrounding Land</u></b>           |
| <b>North:</b> | State Road 84, I-595            | <b><u>Use Plan Designation:</u></b>      |
| <b>South:</b> | Park City West                  | Transportation<br>Residential (10 DU/AC) |

**East:** Digital Comm Link Commercial/Office  
**West:** Scarborough and Vacant Residential (5 DU/AC)  
and  
Residential (10 DU/AC)

**Surrounding Zoning:**

**North:** T, Transportation  
**South:** T-1, Trailer Park (Broward County) and CC, Commerce Center District  
**East:** CC, Commerce Center District  
**West:** CF, Community Facilities District and PRD 5.1

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**ZONING HISTORY**

**Related Zoning History:** None

**Previous Request on same property:** None

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**APPLICATION DETAILS**

The applicant is requesting to rezone the 7.75 acre subject site from T-1, Trailer Park (Broward County) to CC, Commerce Center District, utilizing the Broward County 5% residential to commercial flexibility rule, in order to allow development of a 85,000 square foot, 68 unit Business/Commerce Center. This is a unique application, as it is the first time a request to rezone to the CC, Commerce Center District utilizing the 5% flex rule has been made. Initially, the applicant had requested a land use plan amendment, but after consulting with the Broward County Planning Council it was determined that utilization of the 5% flexibility rule to be a viable mechanism provided that permitted uses are consistent with neighborhood office and/or retail sales of merchandise or services. The applicant has offered voluntary deed restrictions in order to prohibit incompatible uses and achieve compliance with both the Town's and Broward County Land Use plan. The uses the applicant has prohibited are: laboratories, light fabrication, motion picture studio, radio or TV station, research facilities, wholesale. It is noted that Broward County recognizes the Town of Davie Commercial/Office land use classification as Commercial under its land use plan, and this request utilizes 5.9 acres of commercial flexibility. There are currently 211.28 acres of flexibility available within Flex Zone 100.

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**Applicable Codes and Ordinances**

1. Section 12-307 of the Land Development Code, review for rezonings.
2. Section 12-83 of the Land Development Code, Conventional Nonresidential Development Standards, CC, Commerce Center District, requires minimum lot area of 2 acres, minimum lot frontage of 165 feet, setbacks: front 60 feet, side 5 feet minimum and 25 feet maximum (the total side setback requirement for both side lot lines combined shall equal ten (10) percent of the lot frontage), rear 25 feet, and maximum height of 45 feet.

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**Comprehensive Plan Considerations**

**Planning Area:** The subject property falls within Planning Area 4. This planning Area is

bordered by SR 84 on its north, University Drive on its east, Flamingo Road on its west, and an irregular border on its south that corresponds to Nova Drive and, SW 14 Street and the Village of Harmony Lakes development. A portion of the University Drive and SR 84 commercial corridors are included in this area, as are several planned residential communities typically developed at five dwellings per acre, but in some cases up to ten, including Arrowhead Golf Course and Country Club, Village of Harmony Lakes, West ridge, the Ridgeview Lakes developments, Scarborough, Village at Pine Lakes, and the Pine Island Ridge, Park City and Rexmere Village developments, located within an unincorporated area between Nob Hill Road and Pine Island Road.

**Broward County Land Use Plan:** The subject site falls within Flexibility Zone 100.

Article 2.5 (A)(2) of the Administrative Rules Document: Increase and Decrease of Commercial and Residential Acreage. The local land use plan may permit up to five percent (5%) of the area designated for residential use on the Broward County Land Use Plan within a flexibility zone to be used for neighborhood office and/or retail sales of merchandise or services, subject to compliance with Policy 13.01.10 of the Broward County Land Use Plan. No such contiguous area may exceed ten (10) acres in size. For the purpose of this provision, contiguous is defined as: attached; located with 500 feet; or separated only by streets and highways, canals and rivers, or easements.

This five percent (5%) residential-to-commercial flexibility rule may be applied by the local government through (re)zoning or other official action, subject to compliance with Policy 13.01.10 of the Broward County Land Use Plan, and does not require an amendment to the local land use plan map if the provision is certified by the Planning Council within the residential permitted uses section of the local land use plan.

Policy 13.01.10: Local government utilization of the Broward County Land Use Plan "Flexibility Rules," as per policies 1.01.03, 1.01.04, 1.02.01, 1.02.02, 2.04.04, 2.04.05, 3.01.06 and 3.02.02, shall be subject to a determination by the Broward County Commission that such allocation is compatible with adjacent land uses, and that impacts on public school facilities have been adequately considered. Allocations of "flexibility" for "affordable housing" or "special residential facilities" or "urban infill, urban redevelopment and downtown revitalization areas," as defined with the Broward County Land Use Plan shall be exempt from this Policy.

**Applicable Goals, Objectives & Policies:** Policy 8-1: The Commerce/Office category shall provide for the suitable location of office complexes and multi-use developments in a campus like setting consistent with policies directing the location of commercial and industrial land uses.

Policy 9-4: Industrial land uses shall be located with access to primary transportation facilities, particularly interstates, highways, rail corridors, commercial airports, and navigable waterways. Consistent with Policy 9-2, vacant land with such access shall be examined for potential industrial development.

Policy 9-5: Zoning regulations shall address the impacts normally associated with industrial

development, such as noise, vibration, air pollution, and solid/hazardous wastes.

Policy 17-2: No property within the Town shall be rezoned to a zoning district that is not in compliance with the Davie Future Land Use Plan.

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## **Staff Analysis**

The purpose of this rezoning request is to allow development of a 85,000 square foot, 68 unit Business/Commerce Center on the subject site. The request is not in conflict with Comprehensive Plan or any element thereof. The subject site meets the minimum lot area and frontage required by the Land Development Code's conventional nonresidential development standards for the CC, Commerce Center District. It is believed that the uses will not excessively increase traffic beyond what was anticipated by the underlying Residential (5 DU/AC) and Commercial/Office land use plan designations. The proposed rezoning will not create an unrelated isolated zoning district and the applicant has voluntarily eliminated incompatible uses which makes the request consistent with the Comprehensive Plan. The proposed use can be considered to be in harmony with the general intent and purpose of the code, and will not be detrimental to the public welfare.

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## **Findings of Fact**

### **Rezoning:**

#### **Section 12-307(A)(1):**

**The following findings of facts apply to the rezoning request.**

- (a) The proposed change is not contrary to the adopted comprehensive plan, as amended, or any element or portion thereof;
- (b) The proposed change will not create an isolated zoning district unrelated and incompatible with adjacent and nearby districts;
- (c) Existing zoning district boundaries are logically drawn in relation to existing conditions on the property proposed for change;
- (d) The proposed change is not expected to adversely affect living conditions in the neighborhood;
- (e) The proposed change will not create or excessively increase automobile and vehicular traffic congestion above that which would be anticipated with permitted intensities or densities of the underlying land use plan designation, or otherwise affect public safety;
- (f) The proposed change is not expected to adversely affect other property values;
- (g) The proposed change will not be a deterrent to the improvement or development of other property in accord with existing regulations;
- (h) The proposed change does not constitute a grant of special privilege to an individual owner as contrasted with the welfare of the general public;



(i) There are not substantial reasons why the property cannot be used in accord with existing zoning.

(j) The proposed zoning designation may be the most appropriate designation to enhance the Town's tax base given the site location relative to the pattern of land use designations established on the future land use plan map, appropriate land use planning practice, and comprehensive plan policies directing land use location.

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### **Staff Recommendation**

**Recommendation:** Based upon the above and the finding of facts in the positive, staff recommends **approval**, of petition ZB 11-3-01, subject to the applicant's voluntary declaration of restrictions.

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### **Planning & Zoning Board Recommendation**

At the February 13, 2002 Planning and Zoning Board meeting Vice-Chair Bender made a motion, seconded by Ms. Turin, to approve subject to the applicant voluntarily "deed restricting out" telecommunications towers in addition to the other deed restrictions (Motion carried 4-0, Mr. Waitkus was absent).

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### **Exhibits**

1. Conceptual site plan
2. Justification letter
3. Declaration of restrictions
4. 11/6/01 letter to Planning Council
5. Land use map
6. Subject site map
7. Aerial

Prepared by: \_\_\_\_\_

Reviewed by: \_\_\_\_\_



### **Statement and Description of Development**

This Development consisting of 68 units, each unit has an estimated cost of \$75,000.00.

The Units are designed for Business/Commerce Center (20% office)

Development Name: 595 Commerce Plaza

Each unit will be sold to local small Business Owners, typically within a five (5) mile radius of the site.

The anticipated traffic generation, in accordance with the "ITC Manual", is as follows: 1,000 square feet of floor area x 5.43 for a total generation of 461 vehicles per day.

Utilities to serve this Development as follows: Water is from the City of Sunrise with a connection to an existing 8" water main located approximately 20 feet outside the new proposed buildings.

The development will have two (2) master water meters, one (1) for each building. There will be two (2) fire hydrants for fire protection.

Sewer to be connected to an existing Force Main located approximately forty feet (40') outside the proposed buildings. One proposed lift station on site.

Electricity by Florida Power & Light. Each unit will be separately metered.

Site lighting according to site plan. Light poles will be located within the separation Landscape strip of 19'6" with double light fixtures to light up the road (Bright Road) and the parking area in front of the buildings. Each unit will have outside lighting at storefront.

Zoning for the surrounding areas as follows: West of property zoning is CC and Residential. South of Development T-1, Trailer Park, and east of development is CC and Commercial. North of development borders on I-595.

**812 NW 1<sup>st</sup> Street, Fort Lauderdale, FL 33311**

Tree survey is not needed due to the following: The Development site has 37 Palm trees approximately ten to twelve feet (10' - 12') in height within the existing (private) Bright Road median strip. These Palms will be relocated on site.

All other vegetation consists of Florida Holly, and non-indigenous vegetation, which needs to be cleared and grubbed.

## Return to:

Name: James C. Brady & Associates  
Address: 501 N.E. 8th Street  
Fort Lauderdale, FL 33304

## This Instrument Prepared by:

Name: James C. Brady, Esquire  
Address: 501 N.E. 8th Street  
Fort Lauderdale, FL 33304

**DECLARATION OF COVENANTS AND RESTRICTIONS**

THIS DECLARATION of Covenants and Restrictions is made as of the \_\_\_\_ day of February, 2002, by and between \_\_\_\_\_ ("OWNER" or "DECLARANT"), the title holder of record to the following described property, located in Broward County, Florida, to-wit:

("Property")

**WITNESSETH:**

WHEREAS, the OWNER has made an application for the approval of the application of 5% flex rule, as reflected in the Town of Davie Comprehensive Land Use Plan, to the Property in order to permit the development of the Property for office and retail sales and services, and

WHEREAS, the application contemplates the rezoning of the Property to the CC district, and

WHEREAS, the present CC zoning district regulations of the Town of Davie permit uses which are other than office or retail sales or services, and

WHEREAS, the OWNER and the City are desirous of providing for a public record as to those uses which would not be permitted by the application of the 5% flex rule,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, an in consideration of the joinder herein by the Town of Davie, the undersigned OWNER of the property and declarant hereof hereby voluntarily makes the following declaration of covenants and restrictions covering the property, specifying that this Declaration of Covenants and Restrictions shall constitute a covenant running with the land, binding upon the Declarant and all persons deriving or taking title through the Declarant, as follows:

1. These restrictions, during their lifetime, shall be for the benefit of the Town of Davie, Florida.
2. The Property, shall be subject to the following specific restrictions:
  - a. Notwithstanding the applicable zoning district regulations, the following uses shall be prohibited:
    - Laboratories
    - Light Fabrication
    - Motion Picture Studio
    - Radio or TV Station
    - Research Facilities
    - Wholesale
  - b. Except as otherwise provided herein, the subject property shall be subject to the uses permitted under the Town of Davie Zoning District CC, as the same is amended from time to time.
3. These covenants and restrictions are to run with the Property and shall be binding upon all parties and persons deriving or taking title through the Declarant for a period of Ninety-nine (99) years from the date these covenants are recorded in the official records of Broward County, Florida. This Declaration of Covenants and Restrictions may be amended or removed only by the Town of Davie, by written document of equal formality and dignity with the approval of the Declarant or its successors in title or assigns after the holding of the requisite advertised public hearing(s) and the adoption of an appropriate resolution. Any amendment to this Declaration of Covenants and Restrictions or termination hereof shall be recorded in the public records of Broward County, Florida.
4. The invalidation of any one portion of Declaration of Covenants and Restrictions or any portion of this document by judgment or by court order in no way shall effect any other provision which shall remain in full force and effect.
5. The Declaration of Covenants and Restrictions is executed for the purpose of assuring compliance with the 5% flex rule, as the same shall exist from time to time.
6. In the event that any of the uses prohibited hereunder shall become or be deemed to be permissible uses within the limitations of the 5% flex rule, as the same may exist from time to time, such uses shall be automatically permitted on the Property and, upon the application of the applicant, the Town of Davie shall take such steps as shall be necessary and appropriate, to amend this Declaration of Covenants and Restrictions to make the same consistent with the uses permitted thereunder.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed  
this \_\_\_\_ day of February, 2002.

Signed, sealed and delivered in the presence  
of:

OWNER and/or DECLARANT

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Printed Name

jcb/tms

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LAW OFFICES  
**JAMES C. BRADY & ASSOCIATES**

501 NORTHEAST 8th STREET  
FORT LAUDERDALE, FLORIDA 33304  
Telephone (954) 761-1404  
Telefax (954) 761-1489

JAMES C. BRADY, P.A.  
JAMES C. BRADY\*  
\*Also Member: Virginia Bar &  
Bar of the District of Columbia

SONJA K. KNIGHTON  
JOSEPH F. FORLEMBIA

November 6, 2001

Mr. Henry Snizek  
Planning Council  
115 South Andrews Avenue  
Room 307  
Fort Lauderdale, FL 33301

Re: 595 Commerce Park/Town of Davie

Dear Mr. Snizek:

First of all, let me thank you for the time you gave me on October 30, 2001. I have always found you and your offices to be accessible.

At our meeting, I asked you whether or not you anticipated a problem with the application of the "five percent flex rule" to property in the Town of Davie currently zoned T-1. We have discussed this matter with Mark Kutney and he has indicated that he believes that the flex rule is applicable, but we all wanted to pass this by you.

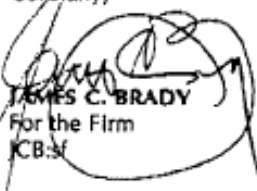
The proposed development is directed at the neighborhood market to provide for office and retail sale of merchandise and services. Units will be sold on a condominium or foot print basis singly or in combination, depending on the desires of the purchaser. The units are intended to afford local service and small retail businesses an outlet to serve the residential and commercial communities within the immediate area. The product will be marketed to local existing and planned business owners seeking to own their own locations. Units will provide for a window/showroom facade with overhead doors for the installation of the users product.

It is my understanding that so long as the use is not of a warehouse nature, and remains a combination of office and the retail sale of merchandise and services, the five percent flex rule would be an appropriate application.

Mr. Henry Snizek  
November 6, 2001  
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I am providing a copy of this letter to Mark Kutney. Should you disagree with my characterization of the meeting, I hope you will feel free to contact me and Mr. Kutney.

Cordially,

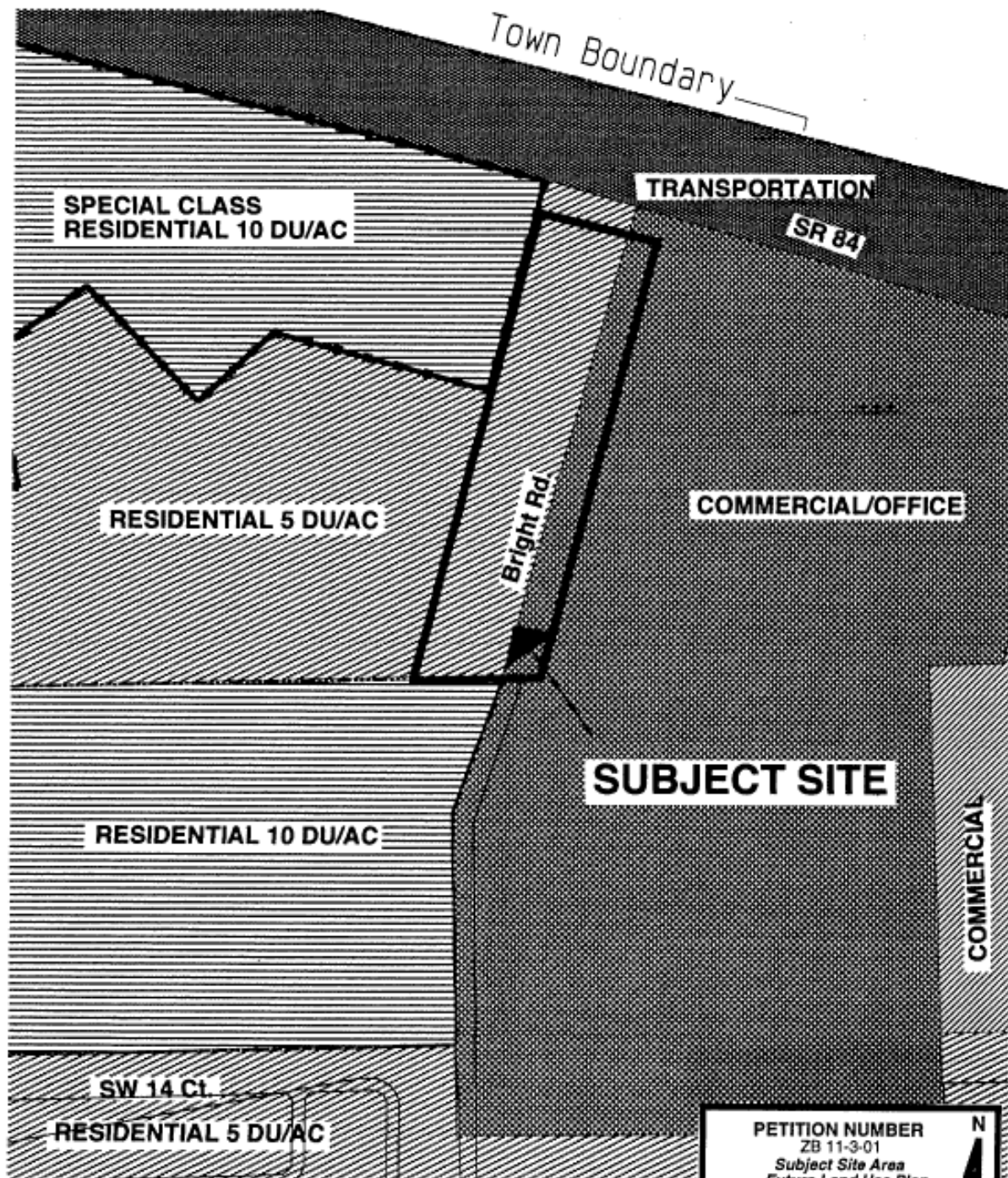


JAMES C. BRADY  
For the Firm  
KCB:J

cc: Mr. Mark Kutney  
Mr. David F. Damerau

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PETITION NUMBER  
ZB 11-3-01  
Subject Site Area  
Future Land Use Plan

N  
4

12/6/01 Scale: 1"=300'  
PREPARED BY: TOWN OF DAVIE  
PLANNING & ZONING DIVISION - GIS

N. New River Canal

Town Boundary

RM-10

CF

PRD 5.1

Scarborough II  
(126-44)

Scarborough Drive

T-1 (County)

Parcel B

Parcel C -

CC

G.B.C. Plat (144-5)

B-1

A-1  
(County)

Parcel A

T-1  
(COUNTY)

SUBJECT SITE

CC

070010

PETITION NUMBER

ZB 11-3-01

Subject Site Area Zoning Map

12/6/01

Scale: 1"=300'

PREPARED BY: TOWN OF DAVIE  
PLANNING & ZONING DIVISION - GIS

PRD-5

SW 14 Place

R-5



N  
↑  
DATE FLOWN  
JANUARY 1998  
SCALE: NTS  
ZB 11-3-01  
PREPARED BY: TOWN OF DAVIE  
PLANNING & ZONING DIVISION - GIS